THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.15722 OF 2007

DATED 24th JULY, 2007

BETWEEN:

Kona Srinivasa Rao

… Petitioner

AND

Principal Secretary to Government, Government of A.P., Revenue U.C-I Department, and others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.15722 OF 2007

ORDER:

The petitioner herein purchased an extent of Acs.0.30 (1,440 square meters) in survey No.90/2 situated at Marripalem Village, within the limits of Municipal Corporation, Visakhapatnam, from Mohd.Shafi, S/o late Peer Ahmed, under an agreement of sale, dated 09.02.1994. He paid agreed sale consideration of Rs.5,76,000/- as alleged. When the sale deed was not registered by vendor, he filed O.S.No.210 of 2006 on the file of Court of the Principal Senior Civil Judge, Visakhapatnam for specific performance of agreement of sale and for perpetual injunction against Mohd.Shafi and other legal heirs of Mohd.Peer Ahmed. The suit was decreed *ex parte* on 22.06.2006 on condition of petitioner depositing balance sale consideration.

The Government of Andhra Pradesh issued G.O.Ms.No.455, dated 29.07.2002, laying down guidelines for allotment of excess vacant land under Section 33 of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act, for brevity). The petitioner submitted an application along with requisite amount by way of Demand Draft to first respondent, which was forwarded to second respondent vide Memo, dated 19.06.2007. The same is still pending. In the meanwhile, G.O.Ms.No.903, Revenue (UC.I) Department, dated 28.06.2007, exempting excess vacant land in survey No.90/2 held by respondents 3 to 6 from the provisions of the Act. The said G.O., was issued in accordance with the guidelines under G.O.Ms.No.456, dated 29.07.2002. Aggrieved by the same, present writ petition is filed seeking invalidation of G.O.Ms.No.903, dated 28.06.2007.

Learned counsel for petitioner submits that first respondent issued the impugned Government Order in contravention of the guidelines contained in G.O.Ms.No.456 and in violation of principles of natural justice. He also submits that respondents 1 and 2 did not conduct enquiry while issuing impugned order, if only the enquiry is conducted, it would come to light that Mohd.Shafi, S/o late Peer Ahmed, sold an extent of Acs.0.30 in favour of petitioner and that the civil Court has decreed for specific performance of agreement of sale, dated 09.02.1994 executed by Mohd.Shafi.

Admittedly, petitioner filed suit for specific performance. The same was decreed *ex parte* on 22.06.2006. Therefore, nothing prevents petitioner from executing the decree in O.S.No.210 of 2006, in which event, whatever defence was available to legal heirs of late

Peer Ahmed with regard to the provisions of Urban Land Ceiling Act would not now be available to Judgment debtors therein. Be it noted that G.O.Ms.No.456 enables the Government to exempt the excess vacant land vested in the Government in favour of declarants/owners of urban land under Section 20(1)(a) of the Act. Now that by reason of the exemption granted in impugned G.O., the Judgment debtors' title to the land is free from encumbrance, there would not be any, ordinarily, impediment for petitioner to execute the decree. The petitioner having approached the civil Court has to work out his remedies in the civil Court. The issue of the impugned Government Order by first respondent does not in any manner prohibit the civil Court from executing decree.

The writ petition is misconceived and is accordingly dismissed. No costs.

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(V.V.S.RAO,J)

24.07.2007.
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